

This letter discusses the requirements for Certificates of Resale. 86 Ill. Adm. Code 130.1405.
(This is a GIL.)

April 24, 2008

Dear Xxxxx:

This letter is in response to your letter dated May 4, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC has recently begun a project to automate the handling of its resale and exemption certificates. As part of this project we are designing a web portal that would allow our retailers to log onto our website and electronically complete all the information required on the state/multi-state/SSTP multi-state certificate.

The final step in this process would be for the retailer to click a button that says 'I certify that all information provided here is complete and accurate to the best of my knowledge'. The information and associated electronic signature would then be stored in NAME.

Question one: Would the state accept this type of certification as an electronic signature on a resale certificate? All information would be stored in NAME. Upon audit the 'certificate' would be printed out via a template, the signature would print out as block text.

Question two: Does the state require that the electronic certificate exactly resemble the certificate used by the state or is the certificate acceptable as long as it contains all the elements required on the state certificate?

Question three: If the state will accept the electronic signature are there any security requirements? For example does the site have to require the retailer have a unique login and password/PIN?

Question four: Does the state have any other conditions or requirements that we need to satisfy in order to be able to accept electronic signatures on resale/exemption certificates?

ABC's goal is to ensure that we are in complete compliance with the state requirements for exempt sales. Updating the technology used to capture exemption/resale certificates will ensure smoother and easier audit experience for both the state and the company. I look forward to receiving your answers regarding the questions posed above.

DEPARTMENT'S RESPONSE:

We are unable to provide you with the specific response you request in the context of a General Information Letter. Provided below is information that we hope you find helpful regarding your exemption/resale certificate.

For general information regarding the seller's responsibility and resale certificates, see the Department's regulations at 86 Ill. Adm. Code 130.1401 (Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale) and 86 Ill. Adm. Code 130.1405 (Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale). According to Section 130.1405(b), a Certificate of Resale must contain the following:

- 1) The seller's name and address;
- 2) purchaser's name and address;
- 3) description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above-stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

An electronic resale certificate should contain all of the information required by 86 Ill. Adm. Code 130.1405. Based on our understanding of the process described in your letter, we do not believe the process (a click of the button) is sufficient to meet the signature requirement contained in

Section 130.1405(b)(4). If a signature is not obtained in accordance with the Department's rules, a sale is presumed to be a sale at retail. However, once again, other evidence can be used to rebut this presumption and prove that the sale was in fact for resale. The risk run by companies in accepting certifications, and the risk run by purchasers in providing such certifications, is that an Illinois auditor is more likely to go behind a certificate of resale and require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk